IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE
L.P.A. NO. 109 OF 2003
in
WRIT PETITION NO. 2464 OF 2003

INDIAN BANK ... Petitioner
vs.
NUTAN WAREHOUSING CO.PVT.LTD.
AND ORS. ... Respondents

Smt. Mohana Nair i/b. M/s. Mohana Nair & Associates for Appellants.
None for respondents.

CORAM: R.M.S. KHANDEPARKAR
&
SMT. R.S. DALVI JJ.
Reserved DATE: 29/03/2006
Delivery date: 12/04/2006

P.C.:

1. The parties have had various litigations between themselves upon amounts advanced by the petitioner to the respondents in the Debt Recovery Tribunal.
2. Court Receiver had been appointed and confirmed to collect rents of godowns belonging to the 1st respondent since 13.3.2002. Appellant issued notice under Section 13(2) of the Securitization & Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance 2002, (hereinafter referred to as “the said ordinance”), claiming

Rs.73.69 lakhs, which the respondent unsuccessfully challenged in a previous writ petition.

3. On 12.12.2002 appellant applied for appropriation of the rent / godown charges collected and lying with the Court Receiver and to be collected in future. On 16.12.2002 respondent applied for discharge of Receiver. Both applications were allowed, the latter being in view of proceedings under Section 13(4) of the said Ordinance. Against the said order allowing appropriation of rents / godown charges to be made by the appellants, the respondent filed appeal before the DRAT and thereafter the above writ petition.
4. The order in appeal noted that the proceeds of the rents having been collected, and kept in a separate Receiver' s account, allowed appropriation in view of the order in the earlier writ petition allowing the appellant to proceed under the said Ordinance . It is also noted that the adjustment could be made and excess amount, if any, appropriated can be directed to be returned with interest. That order is impugned in the above writ petition.
5. The order of appointment of Receiver is not challenged. The order of collection of rents is also not challenged. We fail to understand what purpose would be served if the Receiver is allowed to collect rents, which he has done since March 2002, and which order is by now confirmed, if no appropriation can be allowed, even subject to the appellants taking accounts

and making adjustments.

6. The order impugned in the writ petition is merely a directional order. It does not finally determine the rights of the parties. It prima facie discloses no jurisdictional error.
7. In the writ petition, however, that order has been stayed. Rule is issued. Though the relief of stay is pending the hearing of the Rule, it decides the rights of the parties pending the petition and would continue until its disposal.
8. The respondent contended that the order is ad interim and hence the LPA cannot lie. The order does show the term "Ad-Interim". However, its purport is otherwise. Under the impugned order relief in terms of prayer (b) of the above writ petition is granted. The LPA is therefore, maintainable.
9. The impugned order granting stay is not sustainable.
10. In view thereof the appeal is allowed. The impugned order dated 22.4.2003 of the learned Single Judge is set aside. The learned Single Judge is requested to take up the hearing of the writ petition expeditiously. No order as to costs.

(MRS ROSHAN DALVI J) (R.M.S. KHANDEPARKAR J.)